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Attorney for Plaintiff, DAVID J. LEE

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**DAVID J. LEE, individually and on behalf
of others similarly situated,**

Plaintiffs,

vs.

**CAPITAL ONE BANK and CAPITAL
ONE SERVICES, INC., Virginia
corporations, DOES 1 through 100,
inclusive,**

Defendants.

Case No.: C-07-4599 - MHP

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
AND FOR JUDGMENT ON THE
PLEADINGS**

**DATE: March 3, 2008
TIME: 2:00 p.m.
CTRM: 15
18th Floor
450 Golden Gate Ave.
San Francisco, Ca. 94102**

TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:

Please take notice that Plaintiff, David J. Lee, opposes the Defendants' Motion to Dismiss and for Judgment on the Pleadings on the grounds that:

1. Plaintiff's action is not, as a matter of law, collaterally estopped by Lee v. American Express Travel Related Services, Inc., Case No. CV-07-4765 (CRB)(N.D. Cal. December 6, 2007) ("American Express");
2. Plaintiff has suffered a redressible injury caused by Defendants' practices;
3. Not receiving the full value of the cardmember agreement and thereby not receiving that for which Plaintiff paid – in this instance, an enforceable right to mandatory arbitration – is an injury in fact;
4. Arbitration is not a prerequisite for Plaintiff's standing;
5. The violation of Plaintiff's California statutory right to not have unconscionable terms inserted in his contracts provides an independent injury and source of standing;
6. California's Consumer Legal Remedies Act, even if it does not cover "credit," nonetheless covers Capital One's credit cards;
7. Plaintiff has standing under the Consumer Legal Remedies Act in that he has been "damaged" by Capital One's violation of his statutory right to not have unconscionable terms inserted in his contracts;
8. Capital One Services, Inc. is a proper party-defendant;
9. Plaintiff's Unfair Competition Law claims do not fail as a matter of law; and,
10. The Complaint meets the specificity requirements of Fed.R.Civ.P. 9.

1 The Court is respectfully referred to the accompanying memorandum of points and
2 authorities, request for judicial notice, and Plaintiff's Complaint in support of this Opposition.

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4 Dated: January 28, 2008

Respectfully submitted,

6 /s/

7 Matthew S. Hale
8 Attorney for Plaintiff
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